

Claims 13-15 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on 30 August 2010.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3- 6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nagashima et al. (of record) in view of Golay et al. (of record), for reasons of record set forth in the previous Office Action.

At page 5 of the amendment filed 11 April 2011, Applicants argue that “no evidence has been provided by Nagashima suggesting that transfection of C056^{dim} NK cells with a PINCO vector, or any vector derived from Epstein-Barr virus (EBV) is possible.” However, a teaching of the entire invention in the prior art is not required to support a rejection under 35 USC§103(a), as such would have been anticipatory, and thus applicable under §102, instead. Both cells were of the same general type, NK, and the vector in question is of a type, retroviral, which has been used broadly in the art. In the subsequent paragraph, Applicants continue, arguing that the teaching by the reference of transfection of a T-lymphocyte would not lead to expectation of transfection of another lymphocyte, NK cells. Applicants point out several distinctions in the biological roles of T-lymphocytes and NK cells. However, it is not made clear why these role

Art Unit: 1636

distinctions would have led one of ordinary art to conclude that the process of transfection would differ, given the same general classification of the cells (lymphocytes) and thus a related lineage of said cells. Applicants appear to be raising in effect a distinction without a difference.

Claims 1 and 7-10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nagashima et al. (of record) in view of Fischer et al. (of record), for reasons of record set forth in the previous Office Action.

Bridging pages 5 and 6, Applicants argue that Fischer et al. has no support for the 6-7 Kb insert as the reference upon which it relied did not discuss the question. However, Fischer et al. provided the teaching in the prior art, and one of ordinary skill in the art would have recognized it as a valid teaching. There is no requirement in the instant statute that each teaching of a prior art reference present a chain of provenance or validation back to first principles or any other origin. That the reference was published in a scientific journal would have been sufficient to convince one of ordinary skill in the art. Furthermore, Applicants have not shown that Fischer et al. was wrong; indeed, the teachings in Fischer et al. are in agreement with Applicants' invention.

Claims 11 and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nagashima et al. (cited above) in view of Campana et al. (B, newly cited), for reasons of record set forth in the previous Office Action.

Applicants argue, at the paragraph bridging pages 6 and 7, that transfection of CD56^{dim} cells was unexpected, apparently because the references only taught transfection of CD56^{bright} cells. However, it is not clear where either reference taught that it was not expected that CD56^{dim}

Art Unit: 1636

cells could not be transfected. Indeed, the success at transfecting the bright phenotype of CD56 cells would have been an indication to one of ordinary skill in the art that NK cells generally could be transfected.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Ketter whose telephone number is 571-272-0770. The examiner can normally be reached on Monday-Friday.

Art Unit: 1636

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSK
17 June 2011

/James S. Ketter/
Primary Examiner, Art Unit 1636